

The Hotel Operators' Occupation Tax Act does not include any provision for the exemption of exclusively religious, charitable, or educational organizations, or for governments or their agencies. See 86 Ill. Adm. Code 480.101. (This is a GIL).

July 29, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated June 25, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

As the Management Company for several hotels in your state, we are in the process of updating our records regarding the tax exempt guidelines of your state. Can you please send me all information you have available relating to tax exemptions?

The more detailed information you have available, the better. Here is the type of information we are looking for, specifically:

1. What types or branches, if any, of Federal, State, & Local Governments are exempt?
2. Does the tax exempt entity have to pay for the room charges directly to be granted the exemption, or can they pay personally and later be reimbursed?
3. Do you allow payment for the lodging to be made with any type of special government credit card such as the I.M.P.A.C. credit card?
4. Do you grant the exemption to schools, universities, churches, & other non-profit agencies in your state? What about those same entities located in other states?
5. Do you grant the exemption to guests who stay at the hotel long term? If yes, what do you consider 'long term', 30, 60, 90 days, etc...?
6. Do you have any specific guidelines on how to handle long term guests? Do they need to sign a lease to be granted the exemption, or do they automatically become exempt after an extended period of time? Do we need to refund them for prior taxes paid once they become exempt?

I am attaching a copy of the guidelines the State of Texas has supplied us with for an example of the information we are looking for. Please note that it specifically relates to the tax exemptions they allow from the state tax for hotel accommodations.

Thank you in advance for your prompt attention to this request. Your assistance is greatly appreciated!

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel in Illinois. The Hotel Operators' Occupation Tax Act does not include any provision for the exemption of exclusively religious, charitable, or educational organizations, or for governments or their agencies. See 86 Ill. Adm. Code 480.101(b)(3) and (4), enclosed.

There are two factors we like to stress in regard to this situation. First, the tax is not imposed upon the organization renting the room from the hotel operator. It is imposed, rather, upon the hotel operator. An exemption is useless in this context because there is no tax that is being imposed upon the organization and thus no tax from which a governmental agency or an exclusively charitable, religious or educational organization could be exempted. Secondly, the Hotel Operators' Occupation Tax Act does not contain any provision that relieves governmental agencies or exclusively charitable, religious or educational organizations from paying reimbursement charges which hotel operators are authorized to charge and pass on to customers to reimburse themselves for their tax liability.

The only exemptions available to hotel operators are for rentals to permanent residents and to certain diplomatic personnel. Permanent residents are persons who occupy or have the right to occupy such rooms for at least thirty consecutive days. See Section 480.101(a)(1).

Section 3 of the Hotel Operators' Occupation Tax Act, 35 ILCS 145/1 et seq., states that, "the tax is not imposed upon gross rental receipts for which the hotel operator is prohibited from obtaining reimbursement for the tax from the customer by reason of a federal treaty." 35 ILCS 145/3(d) (1996 State Bar Edition).

As stated above, the legal incidence of the Hotel Operators' Occupation Tax is on the hotel operator, not the renter of the room. However, the hotel operator is authorized to collect a "reimbursement" from the person renting the room. Although the Hotel Operators' Occupation Tax Act authorizes hotel operators to charge this reimbursement, it does not require them to do so.

Under the Vienna Convention, some foreign diplomats are not required to pay reimbursement charges that are similar in nature to taxes. The exemption for rentals to certain diplomatic personnel applies only to diplomatic personnel possessing certain types of diplomatic tax exemption cards issued by the U.S. Department of State, Office of Foreign Missions. See the enclosed copy of FY98-27. In documenting this exemption, we advise that hotel operators obtain a copy of the diplomatic card, or at minimum, a description of the holder's exemption number listed on the card along with other identifying information. Other identifying information can include, for example, the holder's name, mission that they are part of, and the expiration date of the exemption card.

In conclusion, the Hotel Operators' Occupation Tax is not imposed upon charges for hotel rooms to foreign diplomats where a foreign treaty prohibits reimbursement to be collected. Therefore, hotels should not collect the tax from diplomats in these circumstances.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.